

SENATE JOURNAL

OF THE

IDAHO LEGISLATURE

FIRST REGULAR SESSION
SIXTIETH LEGISLATURE

ONE HUNDRED FIFTEENTH LEGISLATIVE DAY
WEDNESDAY, MAY 6, 2009

Senate Chamber

President Little called the Senate to order at 10 a.m.

Roll call showed all members present except Senator Darrington and Acting Senator Thorson, absent and formally excused by the Chair; and Senators Andreason, Davis, Schroeder, and Stegner, absent and excused.

Prayer was offered by Chaplain Henry Webb.

The Pledge of Allegiance was led by Darcie Wonacott, Page.

The Senate advanced to the Third Order of Business.

Reading and Correction of the Journal

The JUDICIARY AND RULES Committee reports that the Senate Journal of the proceedings of May 5, 2009, was read and approved as corrected.

DARRINGTON, Chairman

There being no objection, the report was adopted and ordered filed in the office of the Secretary of the Senate.

Senator Andreason was recorded present at this order of business.

On request by Senator Fulcher, granted by unanimous consent, the Senate advanced to the Sixth Order of Business.

Reports of Standing Committees

May 5, 2009

The JUDICIARY AND RULES Committee reports that Enrolled [S 1152](#), [S 1234](#), [S 1237](#), [S 1238](#), [S 1240](#), [S 1241](#), [S 1242](#), [S 1243](#), and [S 1244](#) were delivered to the Office of the Governor at 3:30 p.m., May 5, 2009.

DARRINGTON, Chairman

The report was ordered filed in the office of the Secretary of the Senate.

May 5, 2009

The TRANSPORTATION Committee reports out [H 286](#) with the recommendation that it be referred to the Fourteenth Order of Business for amendment.

MCGEE, Chairman

There being no objection, [H 286](#) was referred to the Fourteenth Order of Business, General Calendar.

On request by Senator Fulcher, granted by unanimous consent, the Senate advanced to the Eighth Order of Business.

Messages from the Governor

May 5, 2009

The Honorable Brad Little
President of the Senate
Idaho Legislature

Dear Mr. President:

I have the honor to inform you that I have signed today and am transmitting to the Secretary of the State the following Senate Bills, to wit:

[S 1204](#) and [S 1215](#)

As Always - Idaho, *Esto Perpetua*
/s/ C.L. "Butch" Otter
Governor of Idaho

The correspondence was ordered filed in the office of the Secretary of the Senate.

The Senate advanced to the Ninth Order of Business.

Messages from the House

Senators Davis, Schroeder, and Stegner were recorded present at this order of business.

May 5, 2009

Dear Mr. President:

I transmit herewith Enrolled [H 341](#) for the signature of the President.

ALEXANDER, Chief Clerk

The President signed Enrolled [H 341](#) and ordered it returned to the House.

May 5, 2009

Dear Mr. President:

I return herewith [S 1233](#), which has passed the House.

ALEXANDER, Chief Clerk

[S 1233](#) was referred to the Judiciary and Rules Committee for enrolling.

On request by Senator Fulcher, granted by unanimous consent, the Senate advanced to the Twelfth Order of Business.

Second Reading of Bills

[S 1246](#) and [S 1147](#), as amended, by State Affairs Committee, were read the second time at length and filed for third reading.

On motion by Senator Davis, seconded by Senator Kelly, by voice vote the Senate recessed at 11:04 a.m. until the hour of 2 p.m. of this day.

RECESS AFTERNOON SESSION

The Senate reconvened at 2 p.m., pursuant to recess, Acting President Cameron presiding.

Roll call showed all members present except Senator Darrington and Acting Senator Thorson, absent and formally excused by the Chair; and Senators Brackett, McGee, McKenzie, and Stegner, absent and excused.

Prior to recess the Senate was at the Twelfth Order of Business, Second Reading of Bills.

On request by Senator Davis, granted by unanimous consent, the Senate returned to the Sixth Order of Business.

Reports of Standing Committees

President Little returned to the Chair.

May 6, 2009

The JUDICIARY AND RULES Committee reports that [S 1233](#) has been correctly enrolled.

DARRINGTON, Chairman

The President signed Enrolled [S 1233](#) and ordered it transmitted to the House for the signature of the Speaker.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Eighth Order of Business.

Messages from the Governor

May 6, 2009

The Honorable Brad Little
President of the Senate
Idaho Legislature

Dear Mr. President:

I have the honor to inform you that I have signed today and am transmitting to the Secretary of the State the following Senate Bills, to wit:

[S 1183](#), [S 1224](#), [S 1226](#), [S 1229](#), [S 1230](#),
[S 1231](#), and [S 1242](#)

As Always - Idaho, *Esto Perpetua*
/s/ C.L. "Butch" Otter
Governor of Idaho

The correspondence was ordered filed in the office of the Secretary of the Senate.

The Senate advanced to the Ninth Order of Business.

Messages from the House

May 6, 2009

Dear Mr. President:

I transmit herewith Enrolled [H 372](#), as amended in the Senate, for the signature of the President.

ALEXANDER, Chief Clerk

The President signed Enrolled [H 372](#), as amended in the Senate, and ordered it returned to the House.

Senators Brackett, McGee, McKenzie, and Stegner were recorded present at this order of business.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Thirteenth Order of Business.

Third Reading of Bills

On request by Senator Cameron, granted by unanimous consent, [H 369](#) was recommitted to the Finance Committee.

On request by Senator Davis, granted by unanimous consent, the Senate returned to the Sixth Order of Business.

Reports of Standing Committees

May 6, 2009

The TRANSPORTATION Committee reports out [H 226](#) and [H 334](#) with the recommendation that they do pass.

MCGEE, Chairman

[H 226](#) and [H 334](#) were filed for second reading.

May 6, 2009

The TRANSPORTATION Committee reports out [H 338](#) with the recommendation that it be referred to the Fourteenth Order of Business for amendment.

MCGEE, Chairman

There being no objection, [H 338](#) was referred to the Fourteenth Order of Business, General Calendar.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fourteenth Order of Business.

General Calendar

The President declared the Senate resolved into the Committee of the Whole and called Senator Stegner to the Chair to preside during the sitting of the Committee of the Whole.

Following the adjournment of the Committee of the Whole, at the request of the President, Acting President Hill called the Senate to order.

Report of the Committee of the Whole

Senator Stegner, Chairman of the Committee of the Whole, reported out [H 338](#), without recommendation, amended as follows:

SENATE AMENDMENT TO H 338 AMENDMENT TO THE BILL

On page 2 of the printed bill, delete lines 8 and 9, and insert:

"SECTION 2. That Section 63-2412, Idaho Code, be, and the same is hereby amended to read as follows:

63-2412. DISTRIBUTION OF TAX REVENUES FROM TAX ON GASOLINE AND AIRCRAFT ENGINE FUEL. (1) The revenues received from the taxes imposed by sections 63-2402 and 63-2421, Idaho Code, upon the receipt or use of gasoline, and any penalties, interest, or deficiency additions, shall be distributed periodically as follows:

(a) An amount of money equal to the actual cost of collecting, administering and enforcing the gasoline tax requirements by the commission, as determined by it shall be retained by the commission. The amount retained by the commission shall not exceed the amount authorized to be expended by appropriation by the legislature. Any unencumbered balance in excess of the actual cost of collecting, administering and enforcing the gasoline tax requirements by the commission at the end of each fiscal

year shall be distributed as listed in paragraph (e) of this subsection.

(b) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized by the commission to be paid shall be paid from the state refund account and those moneys are hereby continuously appropriated for that purpose.

(c) As soon as possible after the beginning of each fiscal year, the sum of two hundred fifty thousand dollars (\$250,000) shall be distributed to the railroad grade crossing protection account in the dedicated fund, to pay the amounts from the account pursuant to the provisions of section 62-304C, Idaho Code.

(d) As soon as possible after the beginning of each fiscal year, the sum of one hundred thousand dollars (\$100,000) shall be distributed to the local bridge inspection account in the dedicated fund, to pay the amounts from the account pursuant to the provisions of section 40-703, Idaho Code.

(e) An amount of money equal to seven percent (7%) shall be distributed to the state highway account established in section 40-702, Idaho Code.

(f) From the balance remaining with the commission after distributing the amounts in paragraphs (a) through (d) of subsection (1) of this section:

1. One and twenty-eight hundredths percent (1.28%) shall be distributed as follows: sixty-six percent (66%) of the one and twenty-eight hundredths percent (1.28%) shall be distributed to the waterways improvement account, as created in chapter 15, title 57, Idaho Code. Up to twenty percent (20%) of the moneys distributed to the waterways improvement account under the provisions of this paragraph may be used by the department of parks and recreation to defray administrative costs. Any moneys unused at the end of the fiscal year by the department of parks and recreation shall be returned to the state treasurer for deposit in the waterways improvement account. Thirty-three percent (33%) of the one and twenty-eight hundredths percent (1.28%) shall be distributed into the park and recreation capital improvement account as created in section 57-1801, Idaho Code. One percent (1%) of the one and twenty-eight hundredths percent (1.28%) shall be distributed to the search and rescue fund created in section 67-2913, Idaho Code;

2. One and twenty-eight hundredths percent (1.28%) shall be distributed as follows: sixty-six percent (66%) of the one and twenty-eight hundredths percent (1.28%) shall be distributed to the off-road motor vehicle account, as created in section 57-1901, Idaho Code. Up to twenty percent (20%) of the moneys distributed to the off-road motor vehicle account by this subparagraph may be used by the department of parks and recreation to defray administrative costs. Any moneys unused at the end of the fiscal year by the department of parks and recreation shall be returned to the state treasurer for deposit in the off-road motor vehicle account. Thirty-three percent (33%) of the one and twenty-eight hundredths percent (1.28%) shall be distributed into the park and recreation capital improvement account as created in section 57-1801, Idaho Code. One percent (1%) of the one and twenty-eight hundredths percent (1.28%) shall be distributed to the search and rescue fund created in section 67-2913, Idaho Code; and

3. Forty-four hundredths percent (.44%) shall be distributed to the park and recreation capital improvement account as created in section 57-1801,

Idaho Code, to be used solely to develop, construct, maintain and repair roads, bridges and parking areas within and leading to parks and recreation areas of the state.

4. The balance remaining shall be distributed to the highway distribution account created in section 40-701, Idaho Code.

(2) The revenues received from the taxes imposed by section 63-2408, Idaho Code, and any penalties, interest, and deficiency amounts, shall be distributed as follows:

(a) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized by the commission to be paid shall be paid from the state refund account, and those moneys are hereby continuously appropriated.

(b) The balance remaining of all the taxes collected shall be distributed to the state aeronautics account, as provided in section 21-211, Idaho Code.

SECTION 3. That Section 63-2418, Idaho Code, be, and the same is hereby amended to read as follows:

63-2418. DISTRIBUTION OF TAX REVENUES FROM TAX ON SPECIAL FUELS. The revenues received from the tax imposed by this chapter upon the receipt of special fuel and any penalties, interest, or deficiency additions, or from the fees imposed by the commission under the provisions of section 63-2424 or 63-2438, Idaho Code, shall be distributed as follows:

(1) An amount of money equal to the actual cost of collecting, administering and enforcing the special fuels tax provisions by the commission, as determined by it shall be retained by the commission. The amount retained by the commission shall not exceed the amount authorized to be expended by appropriation by the legislature. Any unencumbered balance in excess of the actual cost of collecting, administering and enforcing the special fuels tax requirements by the commission at the end of each fiscal year shall be distributed to the highway distribution account.

(2) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized by the commission to be paid under this chapter shall be paid from the state refund account, those moneys being hereby continuously appropriated.

(3) An amount of money equal to seven percent (7%) shall be distributed to the state highway account as established in section 40-702, Idaho Code.

(4) The balance remaining with the commission after distributing the amounts specified in subsections (1) and (2) of this section shall be distributed to the highway distribution account, established in section 40-701, Idaho Code.

SECTION 4. That Section 40-701, Idaho Code, be, and the same is hereby amended to read as follows:

40-701. HIGHWAY DISTRIBUTION ACCOUNT – APPORTIONMENT. (1) There is established in the state treasury an account known as the "Highway Distribution Account," to which shall be credited:

(a) Moneys as provided by sections 63-2412(1)(e)4, and 63-2418(34), Idaho Code;

(b) All moneys collected by the department, their agents and vendors, and county assessors and sheriffs, under the provisions of title 49, Idaho Code, except as otherwise specifically provided for; and

(c) All other moneys as may be provided by law.

(2) The highway distribution account shall be apportioned as follows:

- (a) Thirty-eight percent (38%) to local units of government as provided in section 40-709, Idaho Code;
- (b) Fifty-seven percent (57%) to the state highway account established in section 40-702, Idaho Code; and
- (c) Five percent (5%) to the law enforcement account, established in section 67-2914, Idaho Code. The state controller shall cause the remittance of the moneys apportioned to local units of government not later than January 25, April 25, July 25 and October 25 of each year, and to the state highway account and the law enforcement account as the moneys become available to the highway distribution account.

(3) Interest earned on the investment of idle moneys in the highway distribution account shall be paid to the highway distribution account.

(4) All idle moneys in the dedicated highway trust or asset accounts or subaccounts established from highway user revenues, reimbursements, fees or permits shall be invested by the state treasurer in the same manner as provided under section 67-1210, Idaho Code, with respect to other surplus or idle moneys in the state treasury. Interest earned on the investments shall be returned to the various highway trust or asset accounts and subaccounts.

SECTION 5. That Section 41-4910, Idaho Code, be, and the same is hereby amended to read as follows:

41-4910. DISTRIBUTION OF APPLICATION FEES AND TRANSFER FEES. (1) The application fees and the transfer fees collected as provided in this chapter shall be promptly remitted to the state treasurer for deposit in the Idaho petroleum clean water trust fund. The transfer fees and accumulated interest which accrued to the fund prior to August 3, 1995, shall remain in the fund. The transfer fees and accumulated interest, which have been held in a separate suspense account since August 3, 1995, shall be distributed as provided in subsection (4) of this section. The transfer fees and accumulated interest which accrue to the Idaho petroleum clean water trust fund subsequent to April 1, 1997, shall be distributed monthly thereafter as provided in subsection (5) of this section.

(2) An amount of money equal to the actual cost of collecting, administering and enforcing the transfer fee by the commission, as determined by it, shall be retained by the commission. The amount retained by the commission shall not exceed the amount authorized to be expended by appropriation by the legislature. Any unencumbered balance in excess of the actual cost of collection, administering and enforcing the transfer fee requirements by the commission at the end of each fiscal year shall be remitted to the state treasurer for deposit into the Idaho petroleum clean water trust fund.

(3) From the receipts of the transfer fee, an amount of money shall be distributed to the state refund account established under section 63-3067, Idaho Code, sufficient to reimburse that account for all current refund claims under this chapter paid from that account. Any refunds due and owing from the commission under this chapter shall be paid from the state refund account and those moneys are hereby continuously appropriated for that purpose.

(4) For the distribution on April 1, 1997, the balance of the transfer fees and accumulated interest accruing to the separate suspense account established for such fees on August 3, 1995, which remain after distributing the amounts specified in subsections (2) and (3) of this section, shall be distributed as follows:

- (a) Twenty percent (20%) to the Idaho petroleum clean water trust fund established in section 41-4905, Idaho Code;
- (b) Three percent (3%) to the Idaho department of parks and recreation in accordance with subparagraphs 1., 2., and 3. of paragraph (ef), subsection (1) of section 63-2412, Idaho Code; and

(c) The remainder shall be distributed:

- (i) Six million dollars (\$6,000,000) to the state highway account for administration by the Idaho transportation department as provided in section 41-4910A, Idaho Code; and
- (ii) The balance remaining to the highway distribution account established in section 40-701, Idaho Code.

(5) For the distribution at the end of fiscal year 1997 and monthly thereafter, the balance of the transfer fees and accumulated interest accruing to the Idaho petroleum clean water trust fund which remain after distributing the amounts specified in subsections (2) and (3) of this section, shall be distributed as follows:

- (a) Seventy-seven percent (77%) to the highway distribution account established in section 40-701, Idaho Code; and
- (b) Three percent (3%) to the Idaho department of parks and recreation in accordance with subparagraphs 1., 2., and 3. of paragraph (ef), subsection (1) of section 63-2412, Idaho Code.

SECTION 6. LEGISLATIVE INTENT. It is legislative intent, in light of changing consumption patterns relating to motor vehicle fuels, including gasohol, biodiesel and biodiesel blends, to review on an annual basis the distributions to the State Highway Account provided for in Sections 63-2412(1)(e) and 63-2418(3), Idaho Code.

SECTION 7. An emergency existing therefor, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after June 1, 2009. Sections 2, 3, 4 and 5 of this act shall be in full force and effect on and after July 1, 2009."

CORRECTION TO TITLE

On page 1, delete lines 2 through 4, and insert:

"RELATING TO FUELS; AMENDING SECTION 63-2407, IDAHO CODE, TO DELETE CERTAIN DEDUCTIONS; AMENDING SECTION 63-2412, IDAHO CODE, TO REVISE DISTRIBUTION OF TAX REVENUES FROM TAX ON GASOLINE AND AIRCRAFT ENGINE FUEL AND TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 63-2418, IDAHO CODE, TO REVISE DISTRIBUTION OF TAX REVENUES FROM TAX ON SPECIAL FUELS; AMENDING SECTION 40-701, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES; AMENDING SECTION 41-4910, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES; TO PROVIDE LEGISLATIVE INTENT; DECLARING AN EMERGENCY AND PROVIDING EFFECTIVE DATES."

The Committee also has [S 1055](#), [S 1092](#), [S 1095](#), [S 1087](#), and [H 286](#) under consideration, reports progress, and begs leave to sit again.

STEGNER, Chairman

On motion by Senator Stegner, seconded by Senator Werk, the report was adopted by voice vote.

[H 338](#), as amended in the Senate, was filed for first reading as amended, and the amendments thereto were referred to the Judiciary and Rules Committee for printing.

On request by Senator Davis, granted by unanimous consent, the Senate returned to the Sixth Order of Business.

Reports of Standing Committees

May 6, 2009

The JUDICIARY AND RULES Committee reports that Senate amendments to [H 338](#) has been correctly printed.

DARRINGTON, Chairman

The report was ordered filed in the office of the Secretary of the Senate.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Eleventh Order of Business.

**Introduction, First Reading, and Reference of Bills,
House Petitions, Resolutions, and Memorials**

[H 338](#), as amended in the Senate, by Ways and Means Committee, was read the first time at length and filed for second reading.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fifteenth Order of Business.

Miscellaneous Business

On motion by Senator Davis, seconded by Senator Kelly, by voice vote, the Senate adjourned at 4:44 p.m. until the hour of 10 a.m., Thursday, May 7, 2009.

BRAD LITTLE, President

Attest: JEANNINE WOOD, Secretary